

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

In the matter of	:	
	:	
MICHAEL G. SHELBY	:	
	:	
	:	
Complainant,	:	
vs.	:	Case No. 749-O
	:	
RIVIERA OF CHEVY CHASE	:	
CONDOMINIUM	:	
	:	
Respondent.	:	

DECISION AND ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland (the "Commission") for hearing on September 21, 2005, pursuant to §§10B-5(i), 10B-9(a), 10B-10, 10B-11(e) 10B-12 and 10B-13 of the Montgomery County Code, 1994 as amended, and the duly appointed Hearing Panel, having considered the testimony and evidence of record, finds, determines and orders as follows:

Background and Summary of Testimony and Evidence

This matter comes before the Commission pursuant to a complaint filed *pro se* by Michael G. Shelby, a resident of the Riviera of Chevy Chase Condominium in Chevy Chase, Maryland, against the Riviera of Chevy Chase Condominium ("Respondent" or "Riviera of Chevy Chase Condominium"). In his complaint, the Complainant alleged that the Respondent failed to follow the requirements of its Declaration and By-Laws in the assignment and re-assignment of a certain limited common element parking space within the Condominium.

Findings of Fact

Complainant is the owner and resident of a unit within the Riviera of Chevy Chase Condominium project located in Chevy Chase, Montgomery County, Maryland. In his opening statement, Complainant stated that he is the owner of Unit 805 in Riviera of Chevy Chase Condominium and has been using that unit and parking spaces #180 and #30 since his purchase in April of 1994. He stated that in January of 2004, his use of parking space #33 was challenged by a new owner of Unit #509, who claimed to be the true owner of that parking space, saying that it was a limited common element assigned by the Riviera of Chevy Chase Condominium to Unit #509. Prior to the commencement of the Complainant's case, Respondent through its counsel,

Julianne E. Dymowski, made a motion to dismiss the complaint, arguing that the Commission lacked jurisdiction over the dispute, based upon the contention that, under the county law governing disputes to be heard by the Commission, the Commission does not have jurisdiction to determine the "title to any unit or any common area or element". The Panel took the motion under advisement at that time and the testimony commenced.

Complainant called Nyla Vehar to the stand as his first witness. Ms. Vehar testified that she was a prior owner of Unit 805 in Riviera of Chevy Chase Condominium, having purchased the unit in 1987 and that she sold the unit to Complainant in April of 1994. She testified that during her ownership of the unit, she had the use of two parking spaces, designated as spaces #33 and #180. She identified Complainant's Exhibit #2 as the Resale Certificate issued by Riviera of Chevy Chase Condominium on February 25, 1987 indicating that as a purchaser of Unit #805 she would also own the use of parking spaces #33 and #180. Complainant's Exhibit #2 was admitted into evidence.

Complainant then called Judith Hackett to testify, who identified herself as a realtor who was involved in the sale of Unit 805 and the two parking spaces from Ms. Vehar to Complainant. She identified Complainant's Exhibit #4 as a page of the sales contract between Vehar as seller and Complainant as buyer and indicated that it identified the property being sold as unit #805 and parking spaces #33 and #180. Complainant's Exhibit #4 was admitted into evidence.

Complainant then called Stanley Odesla, an employee of Riviera of Chevy Chase Condominium, who testified that he has worked for Riviera of Chevy Chase Condominium for the past 17 years. Mr. Odesla confirmed that there was a log book that identified the allocation of parking spaces in the project and identified Complainant's Exhibit #5 as a representative page from that log book. Complainant's Exhibit #5 showed that Unit #805 was associated with parking spaces #180 and #33. Mr. Odesla testified that at some time during the transfer of Unit #509 in 2004 a real estate agent representing the buyer of Unit #509 advised him that under the Declaration of Riviera of Chevy Chase Condominium parking space #33 was assigned to Unit #509 and not Unit #805. Complainant's Exhibit #5 was admitted into evidence.

Complainant presented Complainant's Exhibit #6, being the complete set of governing documents of the Riviera of Chevy Chase Condominium, which was admitted into evidence. Complainant's Exhibit #1 is a portion of Complainant's Exhibit #6. Complainant's Exhibit #3, a page from the minutes of the meeting of the Board of Directors of Respondent from January of 1987 was not admitted, however, the parties agreed to stipulate that Mr. Bennett Leaderman was the then President of Respondent, being the same person who signed Complainant's Exhibit #2 on behalf of Respondent.

At the close of Complainant's case, Respondent renewed its motion to dismiss based upon lack of jurisdiction on the part of the Commission and the Panel once again deferred its decision until the end of the case. Respondent proceeded to present testimony of Catherine Schmitt, President of Respondent. Ms. Schmitt testified that she has been President of the Board of Respondent since 2003, and that she recalled the parking space allocation of space #33 becoming

an issue between the owners of Units #509 and #805 about 1 ½ years ago. She testified that at the time the dispute arose, Complainant was also a member of the Board of Respondent. She testified that when the matter was referred to the Commission she referred the matter to the attorneys for the Condominium.

Following the closing argument by Complainant, Respondent renewed its motion to dismiss. The panel ordered that the record remain open for a period of fifteen (15) days in order that Respondent could research the history of the Maryland Condominium Law regarding Md. Real Prop. Code Ann. §11-108 pertaining to the transfer of limited common elements. Respondent thereafter submitted a report on the applicable law and its effect on Respondent's motion to dismiss.

Conclusions of Law and Discussion

Upon a review of the organizational documents of Riviera of Chevy Chase Condominium, the Maryland Condominium Act, the testimony and other evidence submitted as set forth above, the Panel agrees with Respondent and will grant its motion to dismiss.

Chapter 10B of the Montgomery County Code governs the Commission on Common Ownership Communities and the disputes between an owner and the governing body of an owner's community association. Article 2 of Chapter 10B concerns dispute resolution and the definition section of that Article, §10B-8, governs the jurisdiction of the Commission to resolve disputes. Article 2, §10B-8 (4) states that a dispute (meaning a dispute over which the Commission has jurisdiction) does not include any disagreement that only involves: "(A) title to any unit or any common area or element..." Further, the general definitions of dispute set forth in Article 2, §10B-8 (3) limit jurisdiction to matters involving either "the authority of a governing body..." or the "failure of a governing body..." to do one thing or another.

Complainant's Exhibit #6 included a document entitled "The Riviera of Chevy Chase Condominium Amendment to Exhibit D to the Declaration Initial Assignment of Parking Spaces," which Amendment was recorded in Liber 5528 at folio 794 among the Land Records of Montgomery County, Maryland on June 9, 1980. The original Declaration, recorded on May 11, 1979, was to have included an Exhibit D setting forth the assignment of parking spaces to the units, but it had been omitted. The Amendment assigned space #33 to Unit #509. No evidence was presented indicating any conveyance or re-assignment of space #33 to any other unit following the recording of the Amendment.

Based upon the evidence presented to the Panel at the Hearing and in the supplemental submission of Respondent, the Panel has determined that the dispute in this matter involves only title to the limited common element, parking space #33, and therefore, the Panel and the Commission lack jurisdiction under Montgomery County law to resolve the dispute. The law governing condominiums in Maryland and the Declaration and By-Laws of Riviera of Chevy Chase Condominium appear to be in conflict. The governing documents appear to give the authority to re-assign parking spaces to the Council of Unit Owners, while the state law

authorizes such transfers only by the unit owners themselves. In many cases under the state condominium law, the law can be preempted by a provision of the governing documents. Several sections of the Maryland Condominium Act begin with phrases such as "unless the declaration or bylaws state otherwise..." *e.g.* Md. Ann. Code RP §12-113 (a). In those instances, the governing documents may include provisions contrary to those that the Act requires. In the case of the transfer of limited common element interests, there is no such provision. Therefore, the law prevails and would require such interests to be deeded between unit owners.

Since the Maryland Condominium Act requires that transfers of limited common element interests be accomplished by conveyance among unit owners, it is the opinion of the Panel that this matter involves title to a limited common element, and is therefore excluded from the Commission's jurisdiction.

While the Complainant contends that this matter is a result of the failure of the Respondent to record a re-assignment of parking space #33 to his Unit #805, the Panel concludes that the Respondent lacks the legal capacity to re-assign the parking space. Therefore, this matter does not involve the authority of a governing body to act, nor does it involve the failure of a governing body to act, and it is therefore excluded from the Commission's jurisdiction.

ORDER

Based upon the evidence on the record and for the reasons set forth above, it is this _____ day of _____, 2005, by the Commission on Common Ownership Communities:

ORDERED, that the Complaint filed in the within matter be and it is hereby DISMISSED for lack of jurisdiction.

Panel Members Kevin Gannon and Robert Gramzinski concur unanimously in this decision.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of a final Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Louis S. Pettey, Panel Chair

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